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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Barbara Johnson, } No. CV-23-02080-PHX-SPL
9 Plaintiff, }
10 vs. } ORDER
11 }
12 Commissioner of Social Security }
13 Administration, }
14 Defendant. }

15 Plaintiff Barbara Johnson seeks judicial review of the denial of her application for
16 Disability Insurance Benefits and Supplemental Security Income under the Social Security
17 Act, 42 U.S.C. § 405(g). Before the Court are Plaintiff's Opening Brief (Doc. 18),
18 Defendant Commissioner of Social Security Administration's Response Brief (Doc. 22),
19 Plaintiff's Reply Brief (Doc. 23), and the Administrative Record ("AR") (Docs. 12–17).
20 For the following reasons, the final decision of the Commissioner will be affirmed.

21 **I. BACKGROUND**

22 Plaintiff filed Title II Application for Social Security disability benefits on January
23 29, 2019, and a Title XVI Application for Supplemental Security Income on January 28,
24 2019, for a period of disability beginning on September 19, 2018. (AR at 22). The Social
25 Security Administration ("SSA") denied Plaintiff's claims on March 26, 2029, and again
26 denied it upon reconsideration on August 5, 2019. (Doc. 18 at 2). After a subsequent
27 hearing held on November 2, 2020, the SSA again denied Plaintiff's claims. (AR at 34).

28 Plaintiff appealed to the SSA Appeals Council, who denied Plaintiff's Request for

1 Review on October 15, 2021. (Doc. 18 at 2). Plaintiff then filed a Complaint before this
2 Court, Case No. 2:21-cv-02144-MTL, which was remanded by stipulation on September
3 1, 2022. (*Id.*).

4 On June 20, 2023, Plaintiff appeared at a second hearing before the Administrative
5 Law Judge (“ALJ”). (*Id.* at 3). The ALJ denied the claims again on September 5, 2023.
6 (AR at 3246). Upon consideration of the medical records and opinions, the ALJ evaluated
7 Plaintiff’s disability based on the following medically determinable impairments: lumbar
8 degenerative disc disease, status-post lumbar fusion in 2018, bilateral osteoarthritis of the
9 knees, status-post bilateral knee replacements in February and May 2020, peripheral
10 arterial disease, ischemia of the left great toe, occlusion of the anterior of tibial artery,
11 swelling of bilateral lower extremities post-knee replacements, deep vein thrombosis
12 (“DVT”), congenital renal agenesis, diabetes mellitus (“DM”), obesity, asthma, chronic
13 obstructive pulmonary disorder (“COPD”), fibromyalgia, and degenerative disc disease of
14 the cervical spine. (AR at 3235). Ultimately, the ALJ concluded that Plaintiff “has not been
15 under a disability, as defined in the Social Security Act, from September 19, 2018, through
16 the date of this decision.” (AR at 3246).

17 On October 4, 2023, Plaintiff filed a Complaint in this Court. (Doc. 1). Plaintiff
18 seeks a closed-period award from September 19, 2018, through August 1, 2021, “when she
19 obtained a job [that] accommodates her disabilities and that pays greater than SGA.” (Doc.
20 18 at 3). Having reviewed the Administrative Record and subsequent briefs in their entirety
21 (Docs. 18, 22, 23), the Court will discuss the pertinent evidence in addressing the issues
22 that the parties have raised.

23 **II. LEGAL STANDARD**

24 A person is considered “disabled” for the purpose of receiving social security
25 benefits if she is unable to “engage in any substantial gainful activity by reason of any
26 medically determinable physical or mental impairment which can be expected to result in
27 death or which has lasted or can be expected to last for a continuous period of not less than
28 12 months.” 42 U.S.C. § 423(d)(1)(A). In determining whether to reverse an ALJ’s

1 decision, the district court reviews only those issues raised by the party challenging the
 2 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set
 3 aside the Commissioner's disability determination only if it is not supported by substantial
 4 evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).
 5 Substantial evidence is relevant evidence that a reasonable person might accept as adequate
 6 to support a conclusion. *Id.* To determine whether substantial evidence supports a decision,
 7 the Court "must consider the entire record as a whole and may not affirm simply by
 8 isolating a 'specific quantum of supporting evidence.'" *Id.* (citation omitted). Generally,
 9 "[w]here the evidence is susceptible to more than one rational interpretation, one of which
 10 supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v. Barnhart*,
 11 278 F.3d 947, 954 (9th Cir. 2002).

12 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 13 follows a five-step process. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing
 14 20 C.F.R. § 404.1520(a)). The claimant bears the burden of proof on the first four steps,
 15 and the burden shifts to the Commissioner at step five. *Id.* At the first step, the ALJ
 16 determines whether the claimant is presently engaging in substantial gainful activity. 20
 17 C.F.R. § 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a
 18 "severe" medically determinable physical or mental impairment. 20 C.F.R. §
 19 404.1520(a)(4)(ii). At step three, the ALJ considers whether the claimant's impairment or
 20 combination of impairments meets or medically equals an impairment listed in Appendix
 21 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is
 22 automatically found to be disabled. *Id.* At step four, the ALJ assesses the claimant's
 23 residual functional capacity ("RFC") and determines whether the claimant is still capable
 24 of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If not, the ALJ proceeds
 25 to the fifth and final step, where he determines whether the claimant can perform any other
 26 work in the national economy based on the claimant's RFC, age, education, and work
 27 experience. 20 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

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1 **III. DISCUSSION**

2 Plaintiff raises only one issue on appeal: whether the ALJ erred by failing to
 3 articulate clear and convincing reasons for discounting Plaintiff's symptom testimony.
 4 (Doc. 18 at 2). The ALJ found Plaintiff's statements about the intensity, persistence, and
 5 limiting effects of her symptoms inconsistent and unsupported by the evidence. (AR at
 6 3239). An ALJ performs a two-step analysis to evaluate the credibility of a claimant's
 7 testimony regarding subjective pain and symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014
 8 (9th Cir. 2014). First, the ALJ evaluates whether the claimant has presented objective
 9 medical evidence of an impairment "which could reasonably be expected to produce the
 10 pain or other symptoms alleged." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir.
 11 2007) (citation omitted). If the claimant presents such evidence then "the ALJ can reject
 12 the claimant's testimony about the severity of [their] symptoms only by offering specific,
 13 clear and convincing reasons for doing so." *Garrison*, 759 F.3d at 1014–15 (citation
 14 omitted). The "clear and convincing" standard is not whether a reviewing court is
 15 convinced, but "whether the ALJ's rationale is clear enough that it has the power to
 16 convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

17 A finding that a claimant's testimony is not credible "must be sufficiently specific
 18 to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on
 19 permissible grounds and did not arbitrarily discredit a claimant's testimony regarding
 20 pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991) (quotation marks omitted).
 21 "General findings are insufficient; rather, the ALJ must identify what testimony is not
 22 credible and what evidence undermines the claimant's complaints." *Reddick v. Chater*, 157
 23 F.3d 715, 722 (9th Cir. 1998) (citation omitted); *see also Holohan v. Massanari*, 246 F.3d
 24 1195, 1208 (9th Cir. 2001) ("[T]he ALJ must specifically identify the testimony she or he
 25 finds not to be credible and must explain what evidence undermines the testimony.");
 26 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) ("To determine whether the
 27 claimant's testimony regarding the severity of her symptoms is credible, the ALJ may
 28 consider, for example: (1) ordinary techniques of credibility evaluation, such as the

1 claimant's reputation for lying, prior inconsistent statements concerning the symptoms, and
 2 other testimony by the claimant that appears less than candid; (2) unexplained or
 3 inadequately explained failure to seek treatment or to follow a prescribed course of
 4 treatment; and (3) the claimant's daily activities.”).

5 Here, the ALJ found that the Plaintiff's impairments could be reasonably expected
 6 to cause the symptoms alleged, thus satisfying the first step of the ALJ's evaluation. (AR
 7 at 3239). Next, the ALJ rejected Plaintiff's testimony. (AR at 3239). Although the ALJ's
 8 statement of judgement may appear vague alone, the subsequent paragraphs explain the
 9 specific evidence that the ALJ found inconsistent with the previously described symptoms,
 10 providing clear rationale. (AR at 3240–45); *see Smart v. Kijakazi*, 53 F.4th 489, 499 (9th
 11 Cir. 2022) (finding that it is sufficient for the ALJ to cite “examples across a multi-year
 12 period contrasting [Plaintiff's] subjective pain testimony with objective medical
 13 evidence”). By stating the testimony, the evaluation of it, and the evidence used in
 14 evaluation, the ALJ made an effort to connect the discussion of medical evidence and the
 15 discussion of symptom testimony credibility, thus demonstrating that the ALJ was not
 16 arbitrarily discrediting claimant's testimony. *See Nelson v. Comm'r of Soc. Sec. Admin.*,
 17 No. CV-19-08027-PCT-JZB, 20 WL 1510332, at *3 (D. Ariz. Mar. 30, 2020) (requiring
 18 the ALJ to connect statements and conclusions rather than simply listing facts); *see also*
 19 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (the reviewing Court must assure
 20 that the ALJ did not “arbitrarily discredit a claimant's testimony” (citation omitted)).

21 For example, the ALJ found that with respect to Plaintiff's impairments,

22 the evidence indicates the claimant may have suffered from
 23 impairments during the period at issue that limited the claimant
 24 in a greater manner than provided for in the residual functional
 25 capacity, however, the evidence suggests these limitations
 were limited in duration and did not meet durational
 requirements that necessitate prolonged and disabling
 functional limitations.

26 (AR at 3241). Specifically, with respect to Plaintiff's respiratory impairments, the ALJ
 27 reviewed respiratory and cardiovascular examination records revealing normal, unlaborated
 28 breathing and breath sounds, no shortness of breath, and normal heart rhythm and sounds

1 on multiple occasions beginning in November 2018. (AR at 3240). The ALJ acknowledged
2 that Plaintiff's knee operations resulted in expectant pain and a symptomatic limp, but that
3 Plaintiff improved overtime and recorded to a "full range of motion, normal strength[,] and
4 normal gait over a year after her 2nd total knee replacement." (AR at 3241). To that end,
5 the ALJ noted that Plaintiff's left knee imaging prior to surgery "was not indicative of a
6 condition that would require disabling limitations during the period at issue" in June 2019,
7 and post-surgical imaging in June 2020 showed the knee replacements were in place and
8 intact, the surrounding tissues were full, and there were no periprosthetic lucency, lucent
9 lesions, or fractures. (AR at 3241). The ALJ detailed Plaintiff's post-surgical complications
10 from her lumbar fusion surgery but noted that limitations from these conditions—use of a
11 wheelchair and quad cane in February 2019, and later use of a walker due to unsteadiness,
12 balance, and pain issues in June 2020—were in close proximity to Plaintiff's lumbar fusion
13 surgery, total knee replacement, and reports of ischemic symptoms in her legs. (AR at
14 3240–42).

15 In finding that these conditions did not limit Plaintiff for the requisite duration, the
16 ALJ noted that Plaintiff recovered quickly after her right knee replacement: two weeks post
17 operatively, Plaintiff reported "doing well" and being up and around and had a normal
18 range of motion with light swelling two weeks after that. (AR at 3242). Thus, these findings
19 support the ALJ's determination that while Plaintiff's conditions greatly limited Plaintiff
20 and caused her varying levels of pain, the limitations were not greater "than already
21 provided for in the residual functional capacity." (AR at 3242). Moreover, the ALJ
22 provided various reasons why the discussed medical evidence supported this conclusion
23 and negated Plaintiff's medical expert's opinion that Plaintiff "would need to be off her
24 feet with standing and/or walking no more than one hour a day." (AR at 3245). *Burch v.*
25 *Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005) ("In evaluating the credibility of pain
26 testimony after a claimant produces objective medical evidence of an underlying
27 impairment, an ALJ may not reject a claimant's subjective complaints based *solely* on a
28 lack of medical evidence to fully corroborate the alleged severity of pain." (emphasis

1 added)). While the ALJ found consulting physicians' opinions on Plaintiff's walking and
2 standing limitations persuasive, the ALJ found that those limitations were associated with
3 Plaintiff's knee replacements and other lower extremity procedures, and thus did not meet
4 the durational requirements for the entire adjudicatory period. (AR at 3244).

5 The ALJ also considered statements made by claimant during the adjudicatory
6 period in rejecting Plaintiff's testimony. In rejecting Plaintiff's testimony about her
7 fibromyalgia, the ALJ referred to her medical provider's description of the condition as
8 "stable" in March 2019 and her own statement in June 2019 that she is able to manage and
9 improve her pain with medication and has had a history of the condition for over 12 years,
10 *i.e.* outside of the durational period. (AR at 3242). Additionally, the ALJ noted several
11 medical records throughout the adjudicatory period in which Plaintiff denied feeling
12 increased fatigue, pain, cramping, and other symptoms at various intervals. (AR at 3242).
13 The ALJ explained that this evidence, in conjunction with the evidence that Plaintiff has
14 returned to work without signs of significant medical improvement, suggest that Plaintiff
15 was capable of sedentary work during the adjudicatory period and does not indicate that
16 Plaintiff "has impairments that created limitations that lasted 12 or more months." (AR at
17 3242, 3244).

18 With respect to Plaintiff's DVT and other vascular conditions, degenerative disc
19 disease of the cervical spine, and osteoarthritis, the ALJ found Plaintiff's claims of long-
20 lasting limitations refuted by extensive medical records. (AR at 3240–41). Plaintiff was
21 hospitalized from February 21, 2019 to March 2, 2019 related to her vascular issues, but
22 the ALJ cited subsequent records revealing that Plaintiff had recovered full muscle strength
23 in her bilateral lower extremities; did not require walking assistance; and had no swelling
24 or pain reported during musculoskeletal exams at various intervals from early 2019
25 onward. (AR at 3240–41). The ALJ also noted that MRI records of Plaintiff's degenerative
26 disc disease of the cervical spine in November 2018 and June 2019 showed no significant
27 change from her April 2018 imaging, which was conducted prior to the alleged disability
28 period. (AR at 3240–41). Additionally, the ALJ noted that Plaintiff's position that her

1 muscle weakness and low back pain caused difficulty walking was refuted by her discharge
 2 from physical therapy due to noncompliance with her treatment plan in November 2018.
 3 (AR at 3240); *see Karabajakyan v. Berryhill*, 713 F. App'x 553, 555 (9th Cir. 2017)
 4 (citation omitted) (failure to follow a prescribed course of treatment can constitute clear
 5 and convincing reasons for discounting a claimant's credibility regarding his or her
 6 symptoms). Lastly, the ALJ found that her alleged cognitive difficulties would not limit
 7 her capabilities and found that such difficulties were inconsistent with the opinions of
 8 consulting physicians, Plaintiff's lack of regular mental health treatment, her daily work
 9 and living activities, and her denial of psychiatric symptoms on several treatment visits.
 10 (AR at 3244).

11 Plaintiff also argues that the ALJ did not properly consider the frequency of her
 12 medical appointments in finding her disabilities were nondurational. (Doc. 18 at 11, 15).
 13 With respect to Plaintiff's argument that her conditions required multiple medical
 14 appointments that precluded her ability to work, the ALJ questioned Plaintiff on the record
 15 during the June 20, 2023 hearing regarding why her employment and appointments could
 16 not be scheduled to accommodate each other. (AR at 3264–66); *see also Ford v. Saul*, 950
 17 F.3d 1141, 1156 (9th Cir. 2020) (“An ALJ may consider any work activity, including part-
 18 time work, in determining whether a claimant is disabled . . . and here [Plaintiff's] own
 19 testimony established that she was able to work occasional eight-hour shifts.”). While
 20 Plaintiff asserted at the hearing that she missed multiple days per month (AR at 3264) for
 21 appointments, Plaintiff did not provide evidence that “that the frequency, scheduling, or
 22 duration of her medical appointments inhibited her ability to work on a regular and
 23 continuing basis,” nor that “her appointments lasted entire workdays.” *Mance v. Kijakazi*,
 24 No. 22-35697, 2023 WL 5500429, at *1 (9th Cir. Aug. 25, 2023). To the contrary, as
 25 Defendant notes in its Response, Plaintiff's Opening Brief cites to some appointments that
 26 took under an hour and could be attended on a lunch break or would not otherwise
 27 necessitate the loss of an entire or partial workday. (Doc. 22 at 14–15). Additionally, the
 28 chart included in Plaintiff's Opening Brief shows that there were several months with very

1 few, if any, appointments interspersed throughout the adjudicatory period. (Doc. 18 at 17–
2 20). As such, Plaintiff failed to demonstrate that the frequency and duration of her
3 appointments inhibited her employment ability on a continuous basis throughout the closed
4 period. The Court finds that the ALJ did not err by not evaluating the frequency of her
5 medical appointments.

6 All told, the Court finds that the ALJ provided various reasons why the medical
7 evidence, Plaintiff’s statements, and Plaintiff’s subsequent return to work supported his
8 conclusion that Plaintiff’s conditions did not preclude her ability for sedentary work during
9 the adjudicatory period. The Court thus finds the ALJ provided clear and convincing
10 reasons to reject Plaintiff’s symptom testimony.

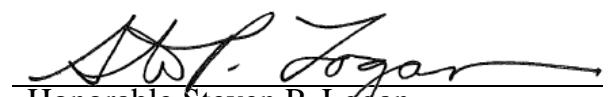
11 IV. CONCLUSION

12 The Court finds that substantial evidence supports the ALJ’s nondisability
13 determination. The ALJ properly discounted Plaintiff’s symptom testimony by providing
14 specific, clear, and convincing reasons supported by substantial evidence. Therefore, the
15 Court finds that the ALJ did not err in his decision, which is based on substantial evidence.
16 Accordingly,

17 **IT IS ORDERED** that the final decision of the Commissioner of the Social Security
18 Administration is **affirmed**.

19 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
20 accordingly and terminate this case.

21 Dated this 14th day of March, 2025.

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Honorable Steven P. Logan
25 United States District Judge
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